


UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.
FEB 08 2012

DEPUTY CLERK

UNITED STATES OF AMERICA)	
)	
v.	)	NO. <u>3:12-00025</u>
)	
DAVID MARK LINEBERRY	)	18 U.S.C. § 2
	)	18 U.S.C. § 1341
DELAINA THOMPSON	)	18 U.S.C. § 1343
a/k/a Delaina Scobey	)	18 U.S.C. § 1344
a/k/a Delaina Davis	)	18 U.S.C. § 1949
a/k/a Delaina McDonald	)	18 U.S.C. § 1957
	)	18 U.S.C. § 981(a)(1)(C)
	)	21 U.S.C. § 853(p)
	)	28 U.S.C. § 2461(c)

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES:

Introduction

At times relevant to this indictment:

1. DAVID MARK LINEBERRY was an attorney licensed to practice law in the State of Tennessee. He was the managing member and 85-percent majority interest holder in Union Street Plaza Operations, LLC (Union Street Plaza), the managing member and 85-percent majority interest holder in 315 Union Street Holdings, LLC (315 Union Street Holdings), and the President and 61-percent majority interest holder in 1st Trust Title, Inc. (1st Trust Title).

2. DELAINA THOMPSON, a/k/a Delaina Scobey, a/k/a Delaina Davis, a/k/a/ Delaina McDonald, was vice president, office manager, and a 39-percent minority interest holder in 1st Trust Title.

3. 1st Trust Title was a corporation organized and existing in the State of Tennessee, was a title agent for issuing title insurance policies in Tennessee for Fidelity National Title Insurance Company, and acted as an escrow agent for real estate transactions in which Fidelity National Title Insurance Company issued title insurance policies to the buyer and the buyer's lenders.

4. Fidelity National Title Insurance Company was a corporation organized and existing in the State of California and was engaged in the business of issuing and underwriting title insurance policies.

5. Union Street Plaza and 315 Union Street Holdings were limited liability companies organized and existing in the State of Tennessee. 315 Union Street Holdings owned two buildings in downtown Nashville (hereafter referred to as the Union Street properties), one located at 301 Union Street (also sometimes identified as 235 3rd Avenue North) and the other at 315 Union Street and leased the Union Street properties to Union Street Plaza.

6. K.W., an individual known to the grand jury, was a 15-percent minority interest holder in Union Street Plaza and in 315 Union Street Holdings.

7. Branch Banking and Trust Company (hereafter referred to as BB&T) was a financial institution the accounts of which were insured by the Federal Deposit Insurance Corporation.

Conspiracy

8. From in or about January of 2008 through in or about September 29, 2011, in the Middle District of Tennessee and elsewhere, **DAVID MARK LINEBERRY**, and **DELAINA THOMPSON, a/k/a Delaina Scobey, a/k/a Delaina Davis, a/k/a/ Delaina McDonald** did willfully, knowingly, and unlawfully combine, conspire, confederate, and agree with each other, to commit certain offenses against the United States, including the following:

a. Knowingly executing and attempting to execute a scheme and artifice to defraud BB&T, a financial institution, and to obtain money owned by and under the custody and control of BB&T by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344; and

b. Having devised and intending to devise a scheme and artifice to defraud Fidelity National Title Insurance Company and to obtain money from Fidelity National Title Insurance Company by means of materially false and fraudulent pretenses, representations and promises, to transmit and cause to be transmitted interstate wire communications made for the purpose of executing such scheme and artifice to defraud, in violation of Title 18, United States Code, Section 1343.

Manner and Means

9. It was a part of this conspiracy and the schemes to defraud and the manner and means by which the conspiracy was sought to be accomplished that:

a. In or about late 2007 or early 2008, **DAVID MARK LINEBERRY** and his business partner, identified in this indictment by the initials K.W., sought a loan from BB&T for the

purpose of refinancing two existing mortgage loans secured by the Union Street properties and for the purpose of paying the construction costs necessary to renovate and convert the Union Street properties into a Hotel Indigo (hereafter referred to as the Hotel Indigo project).

b. On about August 28, 2008, DAVID MARK LINEBERRY signed a loan commitment letter on behalf of the Union Street Companies, and in that loan commitment letter represented that the Union Street Companies would contribute equity to the Hotel Indigo project totaling \$7,985,614 to induce BB&T to loan \$18,700,000 (hereafter referred to as the BB&T Loan) to the Hotel Indigo project.

c. DAVID MARK LINEBERRY arranged for the BB&T Loan to be closed at the offices of 1st Trust Title in Mt. Juliet, Tennessee.

d. On or about August 28, 2008, DELAINA THOMPSON signed an Escrow Closing Instruction Letter in which she agreed that 1st Trust Title would disburse the "Net Loan Proceeds" and the "Borrower's Required Funds" for the BB&T Loan in accordance with the terms and provisions of the Closing Statement for the BB&T Loan, including to payoff two existing loans secured by the Union Street properties, one in the amount of \$4,082,978.26 and one in the amount of \$5,152,197.58.

e. Prior to the time of the closing for the BB&T Loan, the Union Street Companies were given credit by BB&T for equity contributions totaling \$2,809,107 and were required to contribute in cash the balance of the required equity contribution, that is, \$5,176,507, before BB&T would disburse any of the loan proceeds.

f. Prior to the time of the closing for the BB&T Loan, the Union Street Companies did not have sufficient funds to make the cash equity contribution of \$5,176,507 required by BB&T.

g. Prior to the time of the closing for the BB&T Loan, DAVID MARK LINEBERRY instructed DELAINA THOMPSON to falsely advise representatives of BB&T that the cash equity contribution of \$5,176,507 required from the Union Street Companies by BB&T had been received by 1st Trust Title.

h. On August 29, 2008, DELAINA THOMPSON sent an email from Tennessee to representatives of BB&T in Georgia falsely advising them that 1st Trust Title had received the \$5,176,507.00 required from the Union Street Companies by BB&T.

i. In reliance upon the false representation from DELAINA THOMPSON that 1st Trust Title had received the cash equity contribution of \$5,176,507 from the Union Street Companies, BB&T wired loan proceeds in the amount of \$4,151,220.98 to a bank account in the name of 1st Trust Title at Wachovia Bank, N.A.

j. Without the cash equity contribution of \$5,176,507 required from the Union Street Companies by BB&T, 1st Trust Title and DELAINA THOMPSON lacked sufficient funds to pay-off the two pre-existing mortgage loans secured by the Union Street properties and to pay the other expenses associated with the BB&T Loan closing as the BB&T Loan closing instructions required.

k. On the date of the closing for the BB&T Loan, DELAINA THOMPSON sent representatives of BB&T a marked title insurance policy commitment issued in the name of the Fidelity National Title Insurance Company that falsely reflected that the two pre-existing mortgage

loan liens that had encumbered the Union Street properties had been satisfied and that BB&T's lien upon the Union Street properties had priority.

l. On or about September 8, 2008, DAVID MARK LINEBERRY and DELAINA THOMPSON caused to be sent to representatives of BB&T a loan policy of title insurance issued in the name of the Fidelity National Title Insurance Company that again falsely reflected that the two pre-existing mortgage loan liens that had encumbered the Union Street properties had been satisfied and that BB&T's lien upon the Union Street properties had priority.

m. Between on or about October 16, 2008 and on or about April 21, 2009, DAVID MARK LINEBERRY caused the Union Street Companies to draw additional loan proceeds totaling approximately \$8,398,003.20 from the BB&T Loan until the total loan balance owed by the Union Street Companies on the BB&T Loan totaled \$12,642,740.18.

n. On or about April 24, 2009, DELAINA THOMPSON provided to representatives of BB&T an endorsement to the title insurance policy issued to BB&T on the Union Street properties that falsely stated that as of April 23, 2009 there were no liens shown by the public records affecting the Union Street properties that were not shown in the original title insurance policy.

o. Between on or about April 28, 2009 and on or about July 2, 2009, DAVID MARK LINEBERRY caused the Union Street Companies to draw additional loan proceeds totaling approximately \$1,867,026.83 from the BB&T Loan until the total loan balance owed by the Union Street Companies on the BB&T Loan totaled \$14,509,767.63.

p. On or about July 22, 2009, DELAINA THOMPSON provided to representatives of BB&T an endorsement to the title insurance policy issued to BB&T on the Union

Street properties that falsely stated that as of July 21, 2009 there were no liens shown by the public records affecting the Union Street properties that were not shown in the original title insurance policy.

q. Between on or about July 31, 2009 and on or about October 9, 2009, DAVID MARK LINEBERRY caused the Union Street Companies to draw additional loan proceeds totaling approximately \$1,172,478.34 from the BB&T Loan until the total loan balance owed by the Union Street Companies on the BB&T Loan totaled \$15,682,245.97.

r. On or about October 13, 2009, DELAINA THOMPSON provided to representatives of BB&T an endorsement to the title insurance policy issued to BB&T on the Union Street properties that falsely stated that as of October 12, 2009 there were no liens shown by the public records affecting the Union Street properties that were not shown in the original title insurance policy.

s. Between on or about November 3, 2009 and on or about June 9, 2010, DAVID MARK LINEBERRY caused the Union Street Companies to draw additional loan proceeds totaling approximately \$2,803,404.60 from the BB&T Loan until the total loan balance owed by the Union Street Companies on the BB&T Loan totaled \$18,485,650.57.

t. On or about June 22, 2010, approximately twenty-two months after the closing of the BB&T Loan, an attorney representing the 315 Union Street Holdings wrote a letter to an attorney representing Fidelity National Title Insurance Company advising that the pre-existing loan that had encumbered the 315 Union Street property still had not been paid, that the lender holding that pre-existing lien still was owed \$3,591,947.93, that this pre-existing loan had not been paid-off at the time of the BB&T Loan closing because another investor in the Union Street Companies had

defrauded the Union Street Companies and had absconded with the funds that the investor was supposed to invest in the Union Street Companies, that the Union Street Companies were not financially able to pay the balance owed to the lender with the pre-existing lien, that the lender with the pre-existing lien and BB&T likely would declare their loans to be in default when they each learned of the liens held by the other, and that the Union Street Companies would like the assistance of Fidelity National Title Insurance Company in resolving the financial issues that were about to confront the Union Street Companies.

u. Between on or about July 7, 2010 and on or about August 6, 2010, DAVID MARK LINEBERRY caused the Union Street Companies to draw additional loan proceeds totaling approximately \$188,315.63 from the BB&T Loan until the total loan balance owed by the Union Street Companies on the BB&T Loan totaled \$18,600,190.49.

v. In or about October of 2010, representatives of BB&T learned that the Union Street properties still were encumbered by the pre-existing lien that should have been paid off at the time of the BB&T Loan closing, gave notice to the Union Street Companies that they were in default on their obligations under the BB&T Loan, and began preparations to seek appointment of a receiver to assume control of the Union Street properties.

w. On or about December 3, 2010, the Union Street Companies filed for bankruptcy protection in the United States Bankruptcy Court for the Middle District of Tennessee.

x. On or about June 27, 2011, BB&T sold the BB&T Loan to another entity for \$12,500,000, resulting in a loss of principal totaling approximately \$5,046,659.31.

y. On or about September 29, 2011, Fidelity National Title Insurance Company paid into the bankruptcy estate of the Union Street Companies the sum of approximately

\$4,158,777.69 pursuant to the terms of the policy of title insurance fraudulently issued by 1st Trust Title to BB&T at the time of the BB&T Loan closing.

z. Representatives of BB&T were unaware that 1st Trust Title was controlled by DAVID MARK LINEBERRY and that DELAINA THOMPSON was an employee supervised by DAVID MARK LINEBERRY until about October of 2010.

All in violation of Title 18, United States Code, Section 1349.

COUNTS TWO THROUGH SEVEN

THE GRAND JURY FURTHER CHARGES:

The grand jury realleges and incorporates herein by reference the allegations contained in Count One of this Indictment.

From in or about January of 2008 through in or about August 6, 2010, in the Middle District of Tennessee and elsewhere, **DAVID MARK LINEBERRY** and **DELAINA THOMPSON**, aided and abetted by each other, knowingly and wilfully executed and attempted to execute a scheme and artifice to defraud a federally insured financial institution, BB&T.

On or about the dates set forth below with respect to each count, **DAVID MARK LINEBERRY** and **DELAINA THOMPSON**, for the purpose of executing and attempting to execute the aforesaid scheme and artifice to defraud, caused to be submitted to BB&T, a financial institution the deposits of which were then insured by the Federal Deposit Insurance Corporation, the materially false and fraudulent pretenses, representations and promises set forth below with respect to each count, as follows:

Count	Date	Materially False Pretenses, Representations and Promises
2	8/29/2008	DELAINA THOMPSON sent an email to representatives of BB&T falsely advising them that 1st Trust Title had received the \$5,176,507.00 required from the Union Street Companies by BB&T.
3	8/29/2008	DELAINA THOMPSON provided to representatives of BB&T a marked title insurance policy commitment issued in the name of the Fidelity National Title Insurance Company that falsely reflected that the two pre-existing mortgage loan liens that had encumbered the Union Street properties had been satisfied and that BB&T's lien upon the Union Street properties had priority.
4	9/08/2008	DELAINA THOMPSON provided to representatives of BB&T a loan policy of title insurance issued in the name of the Fidelity National Title Insurance Company that falsely reflected that the two pre-existing mortgage loan liens that had encumbered the Union Street properties had been satisfied and that BB&T's lien had priority.
5	4/24/2009	DELAINA THOMPSON provided to representatives of BB&T an endorsement to the title insurance policy issued to BB&T on the Union Street properties that falsely stated that as of April 23, 2009 there were no liens shown by the public records affecting the Union Street properties that were not shown in the original title insurance policy.
6	7/22/2009	DELAINA THOMPSON provided to representatives of BB&T an endorsement to the title insurance policy issued to BB&T on the Union Street properties that falsely stated that as of July 21, 2009 there were no liens shown by the public records affecting the Union Street properties that were not shown in the original title insurance policy.
7	10/13/2009	DELAINA THOMPSON provided to representatives of BB&T an endorsement to the title insurance policy issued to BB&T on the Union Street properties that falsely stated that as of October 12, 2009 there were no liens shown by the public records affecting the Union Street properties that were not shown in the original title insurance policy.

All in violation of Title 18, United States Code, Sections 1344 and 2.

COUNT EIGHT

THE GRAND JURY FURTHER CHARGES:

The grand jury realleges and incorporates herein by reference the allegations contained in Count One of this Indictment.

From in or about January of 2008 through on or about September 29, 2011, in the Middle District of Tennessee and elsewhere, **DAVID MARK LINEBERRY** and **DELAINA THOMPSON**, aided and abetted by each other, knowingly and wilfully devised and intended to devise a scheme to defraud Fidelity National Title Insurance Company and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises.

It was part of this scheme to defraud that, DELAINA THOMPSON provided to an Assistant Vice President and Underwriting Counsel for the Fidelity National Title Insurance Company for his signature a loan policy of title insurance for benefit of BB&T to be issued in the name of the Fidelity National Title Insurance Company and did so without disclosing to the Assistant Vice President and Underwriting Counsel that the loan policy of title insurance falsely reflected that the two pre-existing mortgage loan liens that had encumbered the Union Street properties had been satisfied and that BB&T's lien had priority.

On or about September 8, 2008, DAVID MARK LINEBERRY and DELAINA THOMPSON for the purpose of executing and attempting to execute the aforesaid scheme to defraud, knowingly deposited and caused to be deposited a package to be sent or delivered by commercial interstate carrier to an attorney representing BB&T, such package containing a loan policy of title insurance issued for benefit of BB&T in the name of the Fidelity National Title Insurance Company, signed by an Assistant Vice President and Underwriting Counsel for the Fidelity National Title Insurance

Company, which loan policy of title insurance falsely reflected that the two pre-existing mortgage loan liens that had encumbered the Union Street properties had been satisfied and that BB&T's lien had priority.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT NINE

THE GRAND JURY FURTHER CHARGES:

The grand jury realleges and incorporates herein by reference the allegations contained in Counts One and Eight of this Indictment.

From in or about January of 2008 through on or about September 29, 2011, in the Middle District of Tennessee and elsewhere, **DAVID MARK LINEBERRY** and **DELAINA THOMPSON**, aided and abetted by each other, knowingly and wilfully devised and intended to devise a scheme and artifice to defraud Fidelity National Title Insurance Company and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises.

On or about August 29, 2008, **DAVID MARK LINEBERRY** and **DELAINA THOMPSON** for the purpose of executing and attempting to execute the aforesaid scheme to defraud, caused to be transmitted in interstate commerce, by means of a wire communication, certain signs, signals and sounds, that is, **DELAINA THOMPSON** sent an email from Tennessee to representatives of BB&T in Georgia falsely advising them that 1st Trust Title had received the \$5,176,507.00 required from the Union Street Companies by BB&T.

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS TEN THROUGH TWELVE

THE GRAND JURY FURTHER CHARGES:

The grand jury realleges and incorporates herein by reference the allegations contained in Count One of this Indictment.

On or about the dates set forth below with respect to each count, in the Middle District of Tennessee, **DAVID MARK LINEBERRY** and **DELAINA THOMPSON**, aided and abetted by each other, did knowingly engage in, and attempt to engage in the monetary transactions listed below by, through and to a financial institution, affecting interstate and foreign commerce, involving criminally derived property of a value greater than \$10,000, as specified below, such property having been derived from a specified unlawful activity, to wit, bank fraud as further described in Counts One through Seven of this Indictment:

Count	Date	Monetary Transaction
10	8/29/2008	Issuance of a check in the amount of approximately \$21,881.70 payable to the Register of Deeds
11	8/29/2008	Wire transfer in the amount of \$25,900.00 directed to an account in the name of Epstein Becker & Green P.C. at BB&T
12	8/29/2008	Wire transfer in the amount of \$3,500,000 directed to an account at Integrity Bank

All in violation of Title 18 United States Code, Sections 1957 and 2.

FORFEITURE ALLEGATIONS

Upon conviction of the offenses alleged in this indictment, **DAVID MARK LINEBERRY** and **DELAINA THOMPSON**, shall forfeit to the United States pursuant to 18 U.S.C. Section

981(a)(1)(C) and 28 U.S.C. Section 2461(c) any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including but not limited to:

(a) MONETARY JUDGMENTS


As to DAVID MARK LINEBERRY and DELAINA THOMPSON, a sum of money equal to \$9,250,437.00 in United States Currency, representing the amount of proceeds obtained as a result of the offenses of bank fraud, wire fraud and money laundering as alleged in Counts One through Twelve of the Indictment.

If, as a result of any act or omission of DAVID MARK LINEBERRY and DELAINA THOMPSON, any property subject to forfeiture:

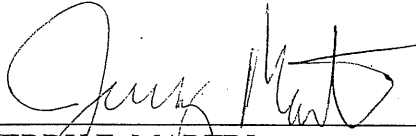
- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be subdivided without difficulty;

the United States intends, pursuant to 21 United States Code, Section 853(p), to seek forfeiture of any other property of DAVID MARK LINEBERRY and DELAINA THOMPSON, up to the value of the forfeitable property described above.

A TRUE BILL



FOREPERSON



JERRY E. MARTIN
UNITED STATES ATTORNEY



BYRON M. JONES
ASSISTANT UNITED STATES ATTORNEY